

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

KIRK JOHN NORTHUP
TDCJ-CID NO. 1469152

v.

RICK THALER

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§

C.A. NO. C-10-085

OPINION DENYING PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL

Petitioner is a state inmate currently incarcerated at the Beto Unit in Tennessee Colony, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging his conviction. (D.E. 1). Pending is petitioner's motion for appointment of counsel. (D.E. 40).

There is no constitutional right to counsel in federal habeas proceedings. Wright v. West, 505 U.S. 277, 293 (1992) (Constitution "guarantees no right to counsel on habeas"); see also Elizalde v. Dretke, 362 F.3d 323, 329 (5th Cir. 2004) (same); Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992) (same). Rule 8(c) of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues that mandate an evidentiary hearing.

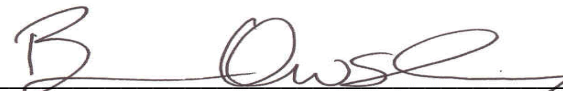
Here, petitioner's request for counsel is unnecessary. The record reveals that petitioner has demonstrated ample ability to submit filings in support of his petition. Moreover, the parties have briefed the merits of his claims. Nothing in these briefs establishes that court-appointed counsel is necessary at this time. Moreover, a memorandum and recommendation has been issued recommending that respondent's motion for summary judgment be granted and that the petition be dismissed. (D.E. 41).

Counsel will be assigned sua sponte if there are issues that mandate an evidentiary hearing be held. Moreover, the Court may appoint counsel if discovery is ordered and there are issues necessitating the assignment of counsel. See Rule 6(a) of the Rules Governing § 2254

Cases; Thomas v. Scott, 47 F.3d 713, 715 n.1 (5th Cir. 1995).

Accordingly, petitioner's motion for the appointment of counsel, (D.E. 40), is DENIED without prejudice.

ORDERED this 10th day of August 2010.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE